

USDOL/OALJ Reporter

[\*Bohan v. Tennessee Valley Authority\*](#), 87-ERA-28 (ALJ June 23, 1988)

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**U.S. DEPARTMENT OF LABOR**  
Office of Administrative Law Judges  
Suite 201  
55 West Queens Way  
Hampton, Virginia 23669

DATE: June 23, 1988  
CASE NO. 87-ERA-28

IN THE MATTER OF

STEVEN L. BOHAN,  
COMPLAINANT,

v.

TENNESSEE VALLEY AUTHORITY,  
RESPONDENT.

Appearances:

Donald K. Vowell, Esq.  
For the Complainant

Brent R. Marquand, Esq.  
For the Respondent

BEFORE: Theodor P. von Brand  
Administrative Law Judge

*RECOMMENDED DECISION AND ORDER*

*I. Preliminary Statement*

This proceeding involves a claim under the Energy Reorganization Act of 1974, (hereinafter "Act" or "ERA") 42 U.S.C. § 5841, as amended, which prohibits a Nuclear Regulatory Commission (NRC) licensee from discharging or otherwise discriminating against an employee who has engaged in activity protected under the Act.

On May 1, 1987, the Area Director of the Employment Standards Administration, Wage and

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Hour Division, U.S. Department of Labor, found a violation of the Act and ordered remedial measures. Respondent, Tennessee Valley Authority, filed an appeal from that decision, requesting a hearing.

A formal hearing was held in Knoxville, Tennessee, on November 3-5, 1987, at which all parties were afforded full opportunity to present evidence and argument as provided in the Act and the applicable regulations.

The findings and conclusions which follow are based upon a complete review of the entire record in light of the arguments of the parties, applicable statutory provisions, regulations, and pertinent precedent.<sup>1</sup>

## *II. Stipulations*

The parties reached the following stipulations:

1. That at all times pertinent to this proceeding, Respondent, Tennessee Valley Authority, is and was an employer subject to the Energy Reorganization Act, and that Complainant was an employee under the Act.
2. That Complainant was discharged by Respondent on December 11 1986. (ALJX 1).

## *III. Findings of Fact*

### *A. Complainant's Testimony*

1. Complainant, Steven L. Bohan, currently resides at 1025 Cedar Avenue, Richland, Washington. He has been employed as a Quality Assurance Electrical Engineer at a nuclear waste storage facility for Westinghouse Hanford Company in Richland, Washington, since June 29, 1987. At Westinghouse, Complainant works directly for the company and earns \$36,000 per year as a salaried employee. He is expected to work several

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hours of overtime as an exempt employee. Prior to being hired by Westinghouse, Mr. Bohan was out of work for approximately six months. (Tr. 31- 32,114-115).

2. Complainant has worked in nuclear engineering since 1977 and has a two-year Associate's Degree in Electrical Technology from Orange County Community College in New York. He has worked as an, engineer and designer in nuclear and non-nuclear systems for twenty years. (Tr. 32-34).

3. Complainant began working for TVA as an engineering associate in Knoxville, Tennessee in December 1985. He was brought into the Watts Bar Program, through a contract with Consultants and Designers, Inc. (C&D), to help with the cable reel program system, to locate documentation to verify the quality of the cable used in the power plant, by tracing purchase orders, transfer requisitions, shipping documents, etc. The Nuclear Regulatory Commission (NRC) requires that such records be kept for the entire life of the plant, through design, construction, and operation. During the time Complainant worked at Watts Bar, the plant was still under construction, and TVA was about to load the fuel in preparation for start up. (Tr. 32, 34-41; RX 1).

4. As part of his search for documentation, Mr. Bohan used the Records and Information Management System (RIMS), a microfilm method for storage of information. In theory, RIMS was supposed to contain copies of all letters and most of the documents retained by TVA on its nuclear plants. TVA preserves the originals of such documents in a vault or record center, and RIMS issued for access purposes. Mr. Bohan's work progressed slowly because the documents on RIMS were sometimes incomplete and/or illegible due to blurring, scratching out, use of correction fluid or tape, all without any indication of when the correction was done or by whom. When such procedures

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were employed, the previous history of the cable was untraceable. According to Mr. Bohan, based on his experience working in nuclear plants, the use of white out fluid to correct quality documents is not recognized as good practice because it eliminates the previous information, and thus the history of the document. Since copies of quality documents must remain legible, the single line-through method of correction using black ink only is recommended. (Tr. 42-47).

5. Complainant spoke with his immediate supervisor, Jorge Ferrer, about the problems he was having with RIMS. According to Mr. Bohan, Mr. Ferrer could find no information regarding his complaints. As a result, Complainant submitted two Problem Identification Reports (PIR's) to Richard Lawrence, his group leader. Mr. Bohan never received a response to his PIR'S, although the PIR system requires review within eight days and corrective action within 60 days. Complainant discussed his PIR's frequently with Mr. Lawrence. Eventually, Mr. Lawrence assigned them official PIR numbers. (Tr. 48-55, 62, 63).

6. Mr. Bohan's first PIR, Number WBNEEB8654 dated June 27, 1986, alleged "[f]ailure to comply with OE-O1-5005 which states 'when a deficiency or inadequacy is

identified in a design process, then the affected portion of the process is to be stopped until the corrective action is implemented' NSRS #1-86-159-NPS identified a deficiency on 2-24-86 which has yet to be resolved (correction to quality records). As to the date of this PIR no resolution has come out on the NSRS and engineering is still working on quality records." (CX 6 at 2).

7. Complainant's second PIR, Number GENEEDB8603 dated July 18, 1986, contended that the Division of Nuclear Engineering did "not have a definitive procedure for control of documents affecting quality (preparation and maintenance of QA documents). The NQAM Part III Sec.

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4.1 is an example of a definitive procedure for control of documents affecting quality but does not pertain to engineering or construction." (CX 6 at 1). In that PIR, Complainant identified what he perceived to be a generic problem at TVA. He did not state any specific examples of problems due to this generic deficiency, but he attached samples he had recovered from RIMS which he showed to Mr. Williams and gave to Mr. Owens for consideration along with his PIR. Although other branches within TVA had definitive procedures for correction of quality documents, the Electrical Engineering Branch, where Complainant worked, did not have an upper tier document delineating proper correction methods for quality records. (Tr. 135-145, 182-185; RX 2).

8. In 1985, a previous Employee Concern had been filed anonymously, addressing the proper method for correcting quality records. In early 1986, a Nuclear Safety Review Staff (NSRS) investigation was conducted, from which the investigators concluded that the line-through method of correction is preferred in the review of QA records from microfilm because correction fluid does not show up on the microfilm. The NSRS recommended that all TVA nuclear organizations require that correction fluid or tape not be used on quality records and that corrections consist of a single line drawn through the error with changes printed above it or at the end of that line. The person making the change should initial and date it. Mr. Bohan reviewed TVA's response to this Employee Concern and concluded that "there was nothing done to correct the problem," beyond the investigative group's suggestions. Mr. Bohan did find a memo from Mr. Raughley, head of the Electrical Engineering Branch, dated June 10, 1986, stating that correction fluid was not to be used and that corrections to a quality document would be made by a single line through, initialed and dated. That memorandum constituted a policy statement, applying to the Electrical Engineering Branch, but it was not widely circulated, according to Complainant,

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and was not considered an upper tier document. (CX 5; Tr. 64-66, 158, 160, 185-186).

9. Toward the end of June 1986, Mr. Bohan met with Mssrs. Lawrence and Williams to discuss his PIR's. As the engineer reviewing PIR'S, Mr. Williams asked Complainant to rewrite PIR No. GENEED8603. Complainant rewrote the PIR dealing with corrections to quality documents, and it was sent back through the system. (Tr. 75-78).

10. When no action was taken on his PIR'S, Mr. Bohan submitted two parallel Employee Concerns (EC) on June 13, 1986. He did not request anonymity because he wanted to receive feedback on these problems. Although Complainant obtained some response to his EC's, he did not see a final determination. However, upon review, Complainant's Employee Concern regarding RIMS was substantiated and the investigation report recommended that "[i]f RIMS is to remain the document control system for DNP, steps should be taken to establish clear program policies and procedures, adequate resources, and support of top management." Moreover, the other EC, related to correction of quality documents, was also considered substantiated, because there were no consistent requirements for the Divisions of Nuclear Construction and Nuclear Engineering for the Correction of quality documents. Corrective action was recommended. (Tr. 78-79, 91-92, 188-190; CX 7 at 1-6, 15-18, 23).

11. At some point, Complainant discovered that J.D. (Jim) Collins had his PIR'S. On August 16, 1986, Mr. Bohan wrote a memo to Mr. Collins, asking for a status report on his PIR'S. He received no response to his memo. Mr. Bohan sent Mr. Collins a second memo requesting an update on his PIR's on August 28, 1986, and received no response. He sent a third memo on September 23, 1986. On September 26, 1986, J. D. Collins notified Complainant that initial evaluation of his PIR's Indicated they were not valid, but were "a

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difference of opinion with management policy and DNE philosophy on procedure." Mr. Collins indicated that he planned further review of the PIR's and official documentation of their position, resulting in a response to Complainant by October 10 1986. Mr. Bohan responded with a memo objecting to Mr. Collins preliminary conclusions and accusing TVA management of "pistol whipping" his PIR's. (CX 6 at 16-21). Complainant received no response to his last memo. (Tr. 79-82; CX 6 at 16-21).

12. After receiving no response on his PIR'S, Mr. Bohan contacted TVA's Inspector General about his concerns on October 24, 1986. (Tr. 92-93; CX 8).

13. According to Complainant, "job shoppers" are technical people, designers or engineers, who work under contract for different companies. He worked for Consultants & Designers, which had a contract with TVA to supply personnel. Job shoppers are generally used for peak load situations or to help with certain problems. (Tr. 84-85),

14. At some point, Mr. Bohan's group was switched over to the Sequoyah project under the supervision of Randall McIntosh. Mr. McIntosh notified his job shoppers that they

would be transferred to Sequoyah on November 5, 1986. Thereafter, the move was delayed on a week-by-week basis until December 1, 1986. The delays caused a great deal of inconvenience to the job shoppers affected; for example, the need to relinquish housing in Knoxville and obtain it near Sequoyah. Mr. Bohan complained of the delay and sought explanation for it from C&D. (Tr. 82-90).

15. Mr. Bohan reported to R. C. (Bob) Williams at Sequoyah Nuclear Plant on December 1, 1986. Mr. Williams directed him to Richard Collins, who referred him to his immediate supervisor, Charles Brush. At that time, Complainant and the other job shoppers from Knoxville were told that their work

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area was not ready yet. The jobs shoppers were assigned to a week-long training program to prepare them to go on-site. At the group indoctrination held by Mr. Collins, Mr. Bohan complained vigorously about the delays and continued lack of work space. Following several days of training, the job shoppers were moved into some cubicles in the building housing engineering's main group. (Tr. 93-97, 178-182).

16. Complainant approached Mr. Brush for his work assignment, but he did not receive it until the second day after the conclusion of the training program. He and three other job shoppers were assigned to evaluate fuse drawings. According to Mr. Bohan, he got along well with his fellow workers. Any occasional differences of opinion were natural among engineering types. In his opinion, the general attitude at Sequoyah was that the delays had been a little disruptive and aggravating for a while, but after a few days the job shoppers were getting back to work. (Tr. 97-107).

17. On Thursday, December 11, 1986, Complainant received his pay check, along with a note that he was terminated per TVA's request. Mr. Bohan telephoned C&D to find out what had happened and was told that TVA had directed his termination because he was no longer needed at Sequoyah. At that point, Complainant approached his supervisors to find out the reason for his termination. He first spoke with Mr. Williams. According to Mr. Bohan, Mr. Williams "[s]aid that if I had known that you were being transferred down here, you know, I wouldn't have let you be transferred down here because I didn't like you from the first time I confronted you in Knoxville." (Tr. 107-109).

18. Immediately thereafter, Mr. Bohan approached Rick Collins for an explanation. Complainant recalled, "Mr. Collins told me that they didn't want us down there to begin with, they were trying to get a contract with United Engineers and there was some conflict of interest problems, so

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the contract hadn't been signed.... And after we got there we-the contract had been signed and some of the people from United Engineers was coming in and they had to release some people. And they were going to release all the job shoppers as soon as the rest of the United Engineers people came in." (Tr. 109-1 1 0).

19. Then, Complainant sought out his immediate supervisor, Charles Brush, for his explanation of the termination. According to Complainant, Mr. Brush did not know much about what had happened. He had only been at Sequoyah for a week or two and could make no decisions because he did not know any of the workers, except as names on a list. (Tr. 110-111).

20. Finally, Mr. Bohan packed his belongings, went through an exit interview, turned in his badge, and left the site that day. (Tr. 111).

21. Since Complainant's discharge notice was dated December 10, 1986, he had only actually worked three days (Monday through Wednesday) before receiving notice of termination. Mr. Bohan testified that nothing unusual happened that week. He had little contact with Mr. Collins beyond their initial meeting, and he saw Mr. Brush only to pass the time of day and to ask for work. (Tr. 111-113).

22. At TVA, through the contract with C&D, Complainant earned \$23.00 per hour, with time and a half for overtime. He did not receive any retirement contribution from C&D. He did receive holiday and vacation pay and some insurance at a reduced rate. (Tr. 113, 176).

23. Complainant remained unemployed for about six months, until being hired by Westinghouse Hanford on June 29, 1987, despite contacting job shops all over the country to find work. (Tr. 113-115).

24. After leaving TVA, Mr. Bohan contacted the

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Nuclear Regulator Commission to check on his PIR's and Employee Concerns. The NRC suggested that he submit a claim to the Department of Labor within 30 days. On January 8, 1986, Complainant filed his complaint. (Tr. 115-116).

25. Complainant recalled that during his exit interview with Randall McIntosh in Knoxville, Mr. McIntosh thanked him and the other job shoppers for a good job. He received no reprimands or criticism of his work while in Knoxville. However, in a Contract Employee Release Form dated January 19, 1987, Mr. McIntosh stated that he would not recommend Complainant for rehire and a C&D Review Form indicated "poor attitude" in the comment section, although his performance was rated average-to-above average. A Contract Employee Release Form dated December 11, 1986, with R. C. Williams listed as the supervisor, indicated that "conduct" and "inadequate performance

were the reasons for Complainant's release. The form included the following explanation: "Attitude was bad. Did not want to be @ SQN and therefore affected his work." Mr. Bohan was not recommended for rehire. According to Complainant, these reasons were not discussed with him. (CX 11 at 3, 8-9; Tr. 121-125).

26. Complainant had not met Rick Collins or Charles Brush prior to his move to Sequoyah. He has never met J. D. Collins. (Tr. 1751).

#### *B. Complainant's Co-Workers*

##### *James Edward Jackson*

27. Mr. Jackson is a contract engineer with M&M Morris Company in Cleveland, Tennessee. In general, Mr. Jackson does electrical design work; he has some experience with nuclear plants, primarily with TVA. (Tr. 584-586).

28. In 1986, Mr. Jackson worked with Complainant at TVA in Knoxville, "in the same area under

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the same subject." During that time, Mr. Jackson had the opportunity to observe Mr. Bohan at work, and testified that he "was a conscientious worker, sometimes perhaps impatient with TVA's paperwork system I know in getting things done. But he was thorough." Mr. Jackson got along with Mr. Bohan, and as far as he observed, Mr. Bohan got along with the other workers. Mr. Williams described Complainant as an individualist, who "in his conscientiousness of the work I'm sure he wanted to follow through with--to the letter of the procedure." (Tr. 586-587).

29. According to Mr. Jackson, it is not unusual for discussions among engineers to become a bit argumentative at times. Mr. Jackson never saw anything unusual involving Mr. Bohan. (Tr. 587-588).

30. In December 1986, Mr. Jackson's group was transferred to Sequoyah. Some frustrations arose during the move due to delays. Some of the other C&D job shoppers communicated with Pat Pye to try and get a definite date for the move. Some also raised complaints with TVA management. (Tr. 588-589).

31. On the day Mr. Jackson left Sequoyah, approximately August 21, 1987, he approached Rick Collins about a reference. According to Mr. Jackson, son, "there was some tension there, and his response was, with all the tendency of you job shoppers to sue TVA and the trouble you make I don't know if I would do that or not." (Tr. 592).

##### *Dennis Wolf*



32. Mr. Wolf is an Electrical Engineering Associate at Sequoyah Nuclear Plant. Prior to that, he worked for TVA in Knoxville with Steve Bohan. According to Mr. Wolf, Complainant seemed to be a good, conscientious worker. Mr. Wolf got along well with Mr. Bohan, who had an average personality which included laughing and smiling. Mr. Bowen

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did not seem unusually pleased at finding a problem at work. (Tr. 265-268).

33. In November 1986, their group was notified that they would be transferred to Sequoyah, but the move was delayed week-by-week for about a month due to unavailability of work space. Problems arose for the workers because they had turned in their apartment keys, their notice and their deposits etc. (Tr. 268-269).

34. Mr. Wolf had the opportunity to observe Complainant in work discussions, but he saw no evidence of a bad attitude. Mr. Bohan seemed knowledgeable to him. (Tr. 270).

35. On or about December 1, 1986, the group was actually transferred to Sequoyah. Initially, they were located in C Building where they had training the first week. Conditions there were crowded. Subsequently, the job shoppers moved to P Building where generally they each had a cubicle in which to work. Some double cubicles were also being used. Complainant was terminated around December 11, 1986. (Tr. 271).

36. In December 1986 and January 1987, United Engineers contract employees arrived. Three or four workers came in December, and then eight or ten arrived later in December or in early January. (Tr. 271-272).

37. Initially, Mr. Wolf worked as a job shopper; he is now, however, a direct employee of United Engineers. He was terminated as a C&D job shopper in August 1987 and rehired by United Engineer a week later. (Tr. 274-275).

38. According to Mr. Wolf, the number of contact employees at Sequoyah has increased. (Tr. 275).

39. While he worked as a C&D job shopper, Mr. Wolf was involved in the impassity project, and he

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worked 12-hour days for about 43 days straight. Thereafter, he worked six 10-hour days per week. (Tr. 276-277).

*Roger Gerth*

40. Mr. Gerth is an electrical engineer, who worked for TVA in Knoxville for a year and a half. While in Knoxville, Mr. Gerth tried to locate documentation regarding cable diameters. His duties involved using the RIMS system, where occasionally he found transmittal letters had been copied onto the system without the documents which should have been attached. (Tr. 210-212).

41. Mr. Gerth knew Mr. Bohan because they were working on similar projects. He was impressed with Complainant because he seemed intelligent and thorough. According to Mr. Gerth, Complainant seemed concerned about getting accurate information. Mr. Bohan also appeared funny and witty to Mr. Gerth, and he did not have any problems getting along with others. In Mr. Gerth's opinion, Complainant always seemed fairly happy-go-lucky. (Tr. 212-214).

42. Toward the end of September or beginning of October 1986, Mr. Gerth was transferred to the Watts Bar site. While in Watts Bar, Mr. Gerth was involved in a conversation with Tom Hughes, a TVA supervisor. Someone mentioned that Complainant had been laid off. According to Mr. Gerth, Mr. Hughes said "something to the effect that he had heard you had to watch out for Steve, or look out for him or something. I had the impression though that he kind of had a, you know, from listening when he had made the remark that he maybe had a lime bit of a reputation." Mr. Gerth testified that, to the best of his knowledge, the grapevine at TVA does not usually operate from site to site. (Tr. 215-217).

43. Mr. Gerth knew of Mr. Bohan's PIR's through discussions he had had with him.

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(Tr. 218-219).

44. On June 12, 1987, Mr. Gerth left TVA, when TVA decided that it would "sub the work out to contractors" and get rid of shoppers. (Tr. 219).

*David Lindsey*

45. Mr. Lindsey is an electrical engineer currently working with IT Corporation. He has worked for a number of nuclear plants over an eighteen-year period, including TVA. (Tr. 232-233).

46. Mr. Lindsey worked for TVA at the same time as Complainant for 15 months about two years prior to the hearing. Although they worked on different floors, Mr. Lindsey saw Mr. Bohan once or twice a week over coffee. According to Mr. Lindsey, Complainant always stayed busy at work and was cooperative about any questions Mr. Lindsey had for him. (Tr. 233-236).

47. When the job shoppers were transferred to Sequoyah, there were several delays regarding the actual date of transfer. Since Mr. Lindsey lived in Knoxville, he was in no hurry to leave and was not inconvenienced. Other group members were more inconvenienced and complained to the supervisors regarding the uncertainty. According to Mr. Lindsey, Mr. Bohan was not one of the very vocal complainers. (Tr. 237-240, 257).

48. Mr. Lindsey indicated that, following Complainant's termination, TVA brought in United Engineers' workers, as well as 4 or 5 others from Watts Bar. From December 1986 through January 1987, the number of employees at Sequoyah appeared to grow. Mr. Lindsey left TVA in Mid-August 1987. After Mr. Bohan left, Mr. Lindsey worked approximately 60 hours per week until his departure. He has never filed a PIR. (Tr. 244-248, 250-252).

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### *C. Complainant's Supervisors In Knoxville*

#### *Richard Lawrence*

49. Mr. Lawrence is employed by TVA, on the Electrical Engineering Branch (EEB) Central Staff. At the time Mr. Bohan came to TVA, Mr. Lawrence was a section supervisor, in charge of doing a portion of the design work for Watts Bar Nuclear Plant. He was Complainant's first line supervisor from December 1985 through September 1986. In general, Mr. Bohan was involved in collecting and assembling documentation for the cables to be used to determine equipment qualification for the cable. (Tr. 612-614, 616).

50. Complainant originally submitted his PIR's to Mr. Lawrence, which he signed because he thought Complainant had a point and, by signing them, they went into the system for upper management review. (Tr. 614-615).

51. Mr. Lawrence has initiated three PIR's and has directed other employees to do so as well. Those PIR's were never held against him, and Mr. Lawrence did not hold those PIR's against Mr. Bohan. Mr. Lawrence's PIR's also 'Look several months to get through the system because the system was overloaded, so he let them run their course. (Tr. 615-616, 620).

52. When Mr. Lawrence's section was sent to Watts Bar in September 1986, Mr. Bohan stayed in Knoxville. Mr. Lawrence did not see Complainant again. He does not know what happened with Complainant's PIR's after he signed them and submitted them for upper management review. Mr. Lawrence did not know about any of Mr. Bohan's employee concerns or contacts with the NRC. He had no discussions with Richard Collins or Charles Brush about Mr. Bohan or his PIR'S. He also did not become aware of Mr. Bohan's termination until recently. (Tr. 616-618).

*Charles Randal McIntosh*

53. Mr. McIntosh was Complainant's section supervisor from September 29, 1986, until his transfer to Sequoyah in late November or early December 1986. (Tr. 621-622).

54. In Mr. McIntosh's opinion, based upon his observations of Mr. Bohan at work, "Steve basically resented our system of procedures and our way of doing business." Mr. McIntosh elaborated, "Well, he was more focused on the inadequacy of our procedures rather than doing his task assignments." Mr. McIntosh just recently became aware of Complainant's PIR'S, EC's, and NRC contact. Mr. Bohan had filed I different PIR with him, which Mr. McIntosh had reviewed and rejected. Mr. McIntosh has initiated four PIR's or SCR'S, with which TVA concurred. In his opinion, no one has held those SCR's against him. (Tr. 622-627).

55. Mr. McIntosh testified that he played no role in Complainant's termination and that he had not discussed Complainant with Richard Collins, Charles Brush, or Bob Williams. (Tr. 627, 633).

56. On January 19, 1987, Mr. McIntosh completed a Contract Employee Release Form, indicating that he would not recommend Mr. Bohan for rehire, without any explanation. (Tr. 631-633; CX 11 at 9).

*D. TVA's Review of Complainant's PIR's<sup>2</sup>*

*Jimmy D. Collins*

57. Mr. Collins is employed by TVA. Through January 1987, he worked as the lead electrical engineer within the Electrical Engineering Branch of the Division of Engineering Design for the Watts Bar Engineering Project. His immediate supervisor was Bill Raughley, the Electrical Engineering Branch Chief, while his administrative supervisor was Jim Cohen, an assistant project engineer. (Tr. 451-452).

58. Jimmy Collins has never met Complainant,

but he is familiar with his name because of his PIR's and because Mr. Bohan worked for Richard Lawrence on some environmental qualification work for the Watts Bar Engineering Project. Complainant fell somewhere in the chain of command below Mr. Collins while he worked on the Waits Bar Project. (Tr. 452-453).

59. According to Mr. Collins,

a PIR is an acronym for Problem Identification Report, which is within the DNE procedure for processing potential adverse conditions to quality. PIR is usually initiated as a result of potential problem or a problem that is not deemed to be nuclear safety related. (Tr. 454)

PIR's are part of the Quality Assurance Program at TVA. (Tr. 486-486).

60. Mr. Collins saw the PIR's initiated by Complainant: "a PIR [No. GENEEB8603] that was initiated by Mr. Bohan in July of 1986, which basically was stating that TVA did not have adequate procedures to control documents (CX 6 at 1); and "an additional PIR [No. WBNEEB8654] that was initiated sometime in the June time frame that basically said TVA did not have adequate procedures for correcting quality documents." (CX 6 at 2; Tr. 453-454).

61. Nuclear Engineering Procedure (NEP) 9.1 was in effect at the time Complainant initiated his PIR's and provides the process by which problems identified within the nuclear program would be handled. NEP 9.1 provides for both PIR's and SCR's. According to Mr. Collins, "[A]n SCR [Significant Condition Report] is a condition that involves nuclear safety and is considered to be significant to the point that TVA would prepare an engineering report, which would be prepared by the line organizations to determine what impact the condition had on nuclear safety, and if the impact on nuclear safety was significant. Then it

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would be reported to the NRC on Waits Bar under that time, under 10 CFR 50-55E." (Tr. 454-456).

Mr. Collins further testified that, "[a] PIR would never go through the engineering report and evaluation to determine if it was reportable to the NRC." However, the NRC periodically audits the tracking log used to keep up with PIR'S. Although the initiator makes the initial determination whether a condition is significant by choosing to write a PIR or SCR, the branch chief or project engineer actually decides the significance of a condition. A PIR may be upgraded to an SCR by a reviewer. If the condition affected nuclear safety as determined by an engineering report, then it would be reported to the NRC. (Tr. 459, 487, 491, 494-498).

NEP 9.1 also provides certain time limitations for the handling of PIR'S, but those limitations were not met in Mr. Bohan's case, because Mr. Collins "was having some problems with the content of the PIR's at the time, and so I had or was having them reviewed by the on-project engineering assurance representative as well as our nuclear licensing staff within the branch." According to Mr. Collins, the PIR's were not sufficiently specific. (Tr. 457-458).

62. Under the procedures for PIR's established by TVA, each PIR receives a unique number which follows the document until it is closed out. Those numbers are placed in a tracking log, which is monitored by the engineering assurance organization to ensure that no problem is ignored. In addition, this log is subject to audit by the NRC. (Tr. 458-459).

63. On September 16, 1986, Mr. Collins referred Mr. Bohan's PIR's to Mr. Raughley for his evaluation. Mr. Raughley in turn referred the PIR's to Mr. Williams for his opinion. In response, Mr. Williams sent a memo denying the validity of those PIR'S, but suggesting a management review team. According to Mr. Collins, Mr. Williams appeared to be concerned about the untimeliness of the handling

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of the PIR's and the possibility of employee concerns. (Tr. 465-469; CX 6 at 12-15).

64. Jimmy Collins received several memos from Complainant requesting a status report on his PIR'S. Although Mr. Collins initially intended to issue the PIR'S, he later determined that they were "not adequate for upper management to process," because they were not specific enough. He also disagreed with the conditions identified in the PIR'S, stating:

In fact, we did have procedures to control QA records. We did have procedures to control corrections to documents. We had policy memorandums that told us specifically how to handle those type things. (Tr. 469-470; CX 6 at 16-19)

65. In response to Mr. Bohan's last memo, Mr. Collins indicated that the official response to his PIR's should be completed by October 10, 1986. cause "that was during the time frame that we However, the official response was delayed because "that was during the time frame that we had first moved on site, and things were a little bit hectic at that time." (Tr. 472-473; CX 6 at 20).

66. On October 24, 1986, Mr. Collins attended a management review team meeting, where Complainant's PIR's were discussed. According to Mr. Collins, the meeting participants felt that the PIR's were not descriptive enough and requested additional information including specific examples. Mr. Bohan refused to make any changes and indicated that "he was ready to go to NRC if we don't do something soon." Mr. Collins may have discussed that with John Lyons, the assistant project engineer for the Watts Bar Engineering Project, located at Waits Bar. (Tr. 464, 475-479, 482-483; CX 6 at 8-9).

67. As a result of the management review team meeting, Mr. Collins testified that the "engineering assurance rep felt like we had probably been

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dealing with this thing long enough and that we did not, in fact, have you know, a prescriptive of procedure on how to correct quality documents as we needed, and so we decided to go ahead and process the PIR." PIR No. WBNEEB8654 was issued on December 16, 1986, signed by H. B. Bounds, the Watts Bar Project Engineer. PIR No. GENEED8603 was not issued. According to Mr. Collins, "the PIR (8654) was found valid based on the management review team's agreement that there were inconsistent procedures. And, basically there should be procedural requirements to control correction of quality documents." (Tr. 499- 504, 519; CX 6 at 3).

68. Although Mr. Collins signed Complainant's PIR No. WBNEEB8654, he testified that his signature only indicated that he had reviewed the condition as identified in the PIR and had started the process to take corrective action or refer it to the next level of management. He signed this PIR after the management review team decided to process it. (Tr. 470-471; CX 6 at 3).

69. PIR No. WBCEEB8654 was issued and distributed as an official PIR within the system to be processed. According to Mr. Collins, if a PIR is issued, then it is considered valid. In Part B of the PIR, the organization responsible for determining corrective action makes its decision. The corrective action is completed in Part C. For Complainant's PIR No. WBNEEB8654, no corrective action was proposed because it was determined that no procedures were violated. Ultimately, this PIR too was held invalid. (RX 7; Tr. 460-461).

70. On January 8, 1987, John Lyons, Assistant Project Engineer on the Watts Bar Engineering Project, issued a memo regarding PIR No. GENEED8603, officially closing it as a non-PIR and noting that it was "invalid and should be voided." (CX 6 at 10-11).

71. In Mr. Collins' opinion, Complainant's PIR's

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were insignificant compared with some of the other problems TVA had. (Tr. 484-486).

72. Mr. Collins has initiated 15-20 PIR's or SCR's over his career. No one has ever held that fact against him. Mr. Collins testified that he did not hold Mr. Bohan's PIR's against him and did not know about the EC'S until January 1987. He also was not aware that Complainant had gone to the NRC. According to Mr. Collins, he did not discuss Complainant or his PIR's with Bob Williams, Rick Collins, or Charles Brush, and he played no role in Complainant's termination. In December 1986, Mr. Collins was working at the Watts Bar site. (Tr. 483-484).

#### *E. Complainant's Supervisors at Sequoyah Nuclear Plant*

*Charles Brush*



73. Mr. Brush is an electrical engineer with TVA. In December 1986, he was working as Principal Engineer for the Electrical Design Section at Sequoyah. He has been with TVA in the nuclear program for 16 years. (Tr. 419, 445).

74. At Sequoyah, Mr. Brush worked directly for Rick Collins. Complainant was assigned to Mr. Brush's section on or about December 1, 1986. At the time, Mr. Brush knew nothing about him, his PIR's, or his EC's. He assigned Mr. Bohan to work on a program to verify that all the safety-related instruments were adequately mounted. (Tr. 420, 422).

75. At the hearing, Mr. Brush indicated that he decided to put Mr. Bohan on the list of job shoppers to be let go, based on his perception of his personality. Mr. Brush testified, "I perceived him after a very limited exposure to have a loud, boisterous, domineering type personality and I was concerned that this might lead to personality conflicts with other people." Rick Collins had asked

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Mr. Brush to identify any poor performers or potentially problematic employees among the job shoppers because UE employees were coming on-site and they were going to have a space shortage. Mr. Brush based his decision upon his observation of Complainant engaged in a heated discussion with fellow employees regarding work matters and some limited direct conversation with him. (Tr. 420-426).

In particular, Mr. Brush recalled one incident where Mr. Bohan approached him with a problem, rather than his technical supervisor as he should have. According to Mr. Brush, Complainant was very excited and forceful, and Mr. Brush "really had the feeling that he was trying to draw attention to himself and maybe trying to impress me with what a good job he was doing." Mr. Brush further testified, "[t]he conversation, his manner, his approach to me in this situation showed me that he was perhaps a very pushy, domineering, forceful, boisterous type personality." In addition, according to Mr. Brush, the issue that Mr. Bohan raised was not a problem. (Tr. 426-431, 443-445, 448).

Referring to that incident in his prior deposition testimony, Mr. Brush testified as follows in response to Complainant's counsel's questions:

Q. Was there anything unusual about that conversation?

A. No.

Q. You just happen to remember that?

A. I just happen to remember that particular conversation.

Q. Certainly nothing happened in that conversation that would lead to his termination?

A. No.



A short recess was taken. Thereafter, Mr. Brush testified in response to Respondent's counsel:

Q. Did the impression that you gained of him

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during that conversation contribute at all or did it play a part in your decision to put him on the list of people to be let go?

A. Yes, it did.

At the hearing, Mr. Brush indicated that he had approached the question from two different angles, i.e., from a technical perspective versus his impression of Complainant's personality through his delivery of the problem. (Tr. 432-435, 440-441).

76. Mr. Brush does not recall any conversation with Mr. Bohan immediately following his termination. (Tr. 437).

77. At the time of termination, Mr. Brush had not seen the results of Complainant's work. (Tr. 446).

78. Mr. Brush indicated that he discussed his reasons for putting Complainant on the list when he gave R to Rick Collins. He does not recall discussing Complainant with Mr. Williams. (Tr. 422).

79. Although Mr. Brush has written CAQR's and SCR's which have been reported to the NRC, they have not been held against him, since that is part of his job. (Tr. 423).

*Richard Collins*

80. Mr. Collins has been with TVA for 18 years; he currently works as the Electrical Group Leader at Sequoyah Nuclear Plant. Mr. Collins first met Complainant on December 1, 1986; prior to that meeting, he knew nothing about him. Mr. Bohan was assigned to work for a principal engineer who worked for Mr. Collins. (Tr. 290-291, 293, 359).

81. Mr. Collins has directed others to write PIR's. To the best of his knowledge, no one at TVA has ever held that against him, and he has never held the submission of PIR's against others. (Tr. 292-294).

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82. In the autumn of 1986, Sequoyah experienced a severe resource shortage. As a result, Mr. Collins requested additional manpower from two Sources: (1) United

Engineers; and (2) the Electric Engineering Branch. He received notice in early November that he could get approximately 12 job shoppers from the Watts Bar Plant. At that time, Mr. Collins did not have room for the job shoppers on-site, and there was a four-week delay of the transfers. The job shoppers arrived at Sequoyah on December 1, 1986. Within two or three days, Mr. Collins heard that the contract with UE had been signed and that twelve UE employees would arrive within a few weeks. As a result, he had too many employees for the space available. Richard Collins and Bob Williams inspected the area to be used and determined they were short at least four spaces, including furnishings. At that point, they decided to release the temporaries who were marginal performers or who did not fit in. On or about December 4, 1986, Mr. Collins instructed his three principal engineers, Charles Brush, Norm Black, and Ron Jenkins, to review all their temporary employees and construct a list of four employees for termination. On December 8, 1986, Norm Black proposed the dismissal of Mr. Higgins, while Mr. Brush submitted the name of Mssrs. Bohan, Gowin, and Grierson for termination. Mr. Collins agreed with their selections. (Tr. 295-296, 300, 304-308).

83. Mr. Collins indicated that both he and Mr. Brush had observed, during their limited contact with Complainant, that he had a negative, surly personality. They agreed that Mr. Bohan had a problem with inconvenience which would probably cause them real difficulty with the pressure expected on their project. Their observations of Complainant at work also led them to believe that he was unhappy about being in Sequoyah, since he seemed gruff and surly. (Tr. 308-314).

84. Once the list was drawn, Mr. Collins took it

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to Mr. Williams for his approval. Mr. Williams was very busy. When he determined that this was the list that the managers had drawn, Mr. Williams instructed Mr. Collins to notify Lowell Fields so that employees in question could be released. Mr. Collins took the list and did as instructed. According to Mr. Collins, prior to the termination, he and Mr. Williams did not discuss the reasons for putting Mr. Bohan on the list. (Tr. 314-315).

85. Mr. Collins testified that he did not know about Complainant's PIR's, so they could not have influenced his decision to terminate him. In addition, since Mr. Collins had no opportunity to observe the quality of Mr. Bohan's work, that also played no role in the decision to terminate him. (Tr. 315-316).

86. After being notified of his termination, Mr. Bohan confronted Mr. Collins, who informed him of the projected shortage of space. At that meeting, according to Mr. Collins, Complainant was visibly upset, gruff, and surly, but not abrasive, vocal or boisterous. (Tr. 316-317, 370-373).

87. Mr. Collins testified that he did not speak with anyone at Waits Bar or Knoxville about Complainant prior to his termination. (Tr. 323-324).

88. The UE employees began arriving in mid-December 1986, and all twelve were in place by January 5, 1987. Although there remained some empty cubicles in Mr. Collins' area, no furnishings were available. Since then, more space has become available due to the use of mobile office units, the conversion of a shopping center to office space, and the reduction of on-site personnel by other organizations. (Tr. 344, 357, 391- 393).

89. Upon his arrival at Sequoyah, Mr. Bohan attended training classes from Monday through Thursday morning. Thereafter, he worked for Mr. Brush. The following Monday, Mr. Collins and his

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principal engineers made up the list of job shoppers to be terminated. (Tr. 357, 363-369).

90. According to Mr. Collins, Mr. Grierson was terminated because he lost his temper over work space and was insubordinate to a supervisor. Mr. Higgins was released because his performance was slow, uncertain, and did not meet the requirements for senior level engineer. Mr. Gowin was chosen for dismissal because he was not aggressive in his work assignments and did not apply himself. However, due to the intercession of the Deputy Director of Nuclear Power, Mr. Gowin was transferred back to Watts Bar rather than terminated. (Tr. 367-369, 377).

91. The remainder of the job shoppers stayed on, working six 10-hour days per week, with the exception of those on the impassity project who worked a large number of 12-hour days in a row. According to Mr. Collins, the work was plentiful, but there was a shortage of work space. (Tr. 388-390).

92. On August 21, 1987, as James Jackson prepared to depart from Sequoyah, he asked Mr. Collins whether he would recommend him for rehire at TVA. Mr. Collins testified that he responded:

. . . rather than being evasive I told him that, you know, I didn't have any problem with his work record or with him, and that I wouldn't have any problem recommending him but that it probably wouldn't do any good because of the DNE, Division of Nuclear Engineering Policy and EEB Policy with regard to job shoppers.

And, he says, you mean because of the problems they cause. And, I said, yeah. Sometimes they're more problems than they are worth. And, he said, I understand and that was it.

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Mr. Collins testified that he did not mention anything about lawsuits in his conversation with Mr. Jackson, but he presumed that Mr. Jackson referred to "the threat of a lawsuit

that day by a co-worker of his that was being terminated the same day he was, that had threatened to sue TVA over one week's disputed pay." (Tr. 599-601).

93. In his statement to the Department of Labor investigator, which Mr. Collins reviewed and signed, he indicated the following:

Steve Bohan-he was unhappy about being at Sequoyah. The others seemed to accept what they had to do to stay on the job-Brush was his section supervisor-He thought Bohan did not have a good attitude about being here. He had been in Knoxville about a year-He was talking about moving and getting a car to Texas. Williams my supervisor indicated he had met Bohan before and he did not have a high regard for him-Williams indicated that part of the way he felt about Bohan was because of the way Bohan reacted to not getting an SCR or PIR accepted. That Bohan had thought it was a problem and it was not.

Further, in his DOL statement, Mr. Collins added:

Williams was aware of the problem we had had here with Grierson and supported the decision on him. He had no comment on Gowin and Higgins. (Tr. 602-606; L-X 25)

94. At the hearing, Mr. Collins testified that he was not aware of Mr. Bohan's PIR's or EC's until after his termination and that he and Mr. Williams did not discuss the PIR's until after Complainant's termination. (Tr. 315, 604-605, 609).

*Robert Carlton Williams, Jr.*

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95. Mr. Williams is an electrical engineer for TVA, working on its Sequoyah Nuclear Plant. Prior to October 15, 1986, he was the principal nuclear engineer in Knoxville. As principal nuclear engineer, Mr. Williams was responsible for the licensing interface with the NRC and anything related to electrical engineering in TVA's quality assurance program. His duties included reviewing PIR'S, SCR's and CAQ's for the Chief Electrical Engineer. Regulations require TVA to have quality assurance procedures. (Tr. 649-651, 664, 711).

96. Mr. Williams first met Mr. Bohan when he and Richard Lawrence came to his office to discuss a draft PIR. Prior to that, Mr. Williams had never heard of Mr. Bohan or his PIR'S. Mr. Williams described his meeting with Mr. Bohan as "just a professional discussion." Primarily, according to Mr. Williams, he told Mr. Bohan that it was incorrect to state that TVA did not have procedures to govern quality work. Rather, TVA had volumes of procedures, but they were very general. Complainant "was looking for something very specific that would give him a step by step walk-through of how he did a particular task," so he did not feel that TVA's general procedures were adequate. Mr.

Williams explained that "the decision to make those procedures very general was a corporate decision. And, part of the discussion we had was the PIR's is not an appropriate place to really challenge corporate policy." He then suggested that the employee concern program would be a more appropriate forum for Complainant's problem. (Tr. 652-665, 709-711).

97. According to Mr. Williams, a PIR must cite a specific example of a problem caused by a lack of procedure. Also, for a problem to constitute a condition adverse to quality, it must violate a legal, regulatory or procedural requirement. As a result, Mr. Williams informed Mr. Bohan that his concerns were not valid PIR'S. (Tr. 654, 656).

98. Mr. Williams saw Complainant's PIR's again

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in late September 1986, when Branch Chief Bill Raughley asked his opinion of them. After reviewing the PIR's again, Mr. Williams returned them to Mr. Raughley, stating that he still felt they were not valid. (Tr. 657-660). In his memo to Mr. Raughley dated September 17, 1986, Mr. Williams wrote:

We need to talk about this one!

There is *NO* validity to either PIR or any of the previous versions. . . . something needs to be done with this yesterday." The timeliness and violation of the NEPs are going to be a much bigger issue than the PIRs. I suggest a management review team of yourself, Coan (or Gandi), and P. Duncan review these and write them off as non PIR'S. The EA and NSRS have both extended that opinion.

The CAQ process is not the proper forum for disagreements with management policy. The reason I suggest the review team noted above is Mr. Bohan's problem- he doesn't agree with DNE philosophy on non prescriptive procedures-but Coan/Gandi need to be aware because I don't think there is any way we will get out of an employee concern. We have given Bohan basis is our lack of timeliness and our non responses to his memo's. [sic] This hasn't been handled well-from that perspective. (CX 6 at 15) (*Emphasis in Original*)

According to Mr. Williams, his major concern at that time was not the PIR's themselves, but rather the untimeliness of the corrective action program handling their review. (Tr. 658-660, 678-679, 721 - 725).

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99. After his transfer to Sequoyah on October 15, 1986, Mr. Williams was no longer involved with Complainant's PIR'S. Mr. Williams testified that he did not know that Mr. Bohan had initiated employee concerns or that he was ready to go to the NRC.

Subsequently while preparing for hearing, Mr. Williams reviewed the reports related to Complainant's employee concerns, and he noted that the EC's were considered substantiated. However, according to Mr. Williams, the decisions regarding Complainant's EC's have no bearing on his opinion of the PIR'S, because the EC program is a "valid forum for his concern over the lack of specifically in our procedures;" whereas, PIR's are used strictly to document a specific problem with nuclear safety-related systems. (Tr. 664,681-683).

100. Mr. Williams testified that he has initiated a CAQ, and, to the best of his knowledge, it has not been held against him. When asked whether he held the fact that Mr. Bohan initiated any PIR's or SCR's against him, Mr. Williams responded:

It wasn't uncommon at all from the position I held I reviewed probably 700, 750 a year which is about 2 or-for every person in the electrical discipline. You know it wasn't uncommon at all for a person to initiate them and it wasn't uncommon at all for them to be sent back for either more specific writing or more details of what the problem entailed.

From a management perspective we probably sent back I guess 80 percent of the ones that we saw. (Tr. 665-666)

101. Compared to the other CAQ'S, Mr. Bohan's PIR was relatively insignificant and, had his PIR's been valid, the cost of responding to his would have been very minor. (Tr. 66-669, 723).

102. Mr. Williams listed the following reasons for the delay in resolving Complainant's PIR'S:

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- (a) a large number of conditions adverse to quality were submitted in 1986, including 80 submitted simultaneously by Sequoyah design base line;
- (b) TVA was concentrating its efforts on re-starting Sequoyah;
- (c) PIR's are by definition less serious and less urgent than SCR'S;
- (d) Mr. Bohan's lack of specificity resulted in the need to rewrite them; and
- (e) Mr. Williams had opined twice that they were invalid. (Tr. 659-666, 685-692, 726-728; RX 12)

103. After transferring to Sequoyah, Mr. Williams discovered that he needed additional manpower and requested it from the Branch Chief. although Mr. Raughley attempted to get self-managed sections of contract employees from United Engineers, that contract was delayed by conflict of interest problems. In the interim, he obtained the job shoppers from Waits Bar, including Steve Bohan, and assigned them to Sequoyah. (Tr. 670-672).

104. Due to space shortages, there was a four- to-six week delay of the transfer of the C&D job shoppers. They arrived on-site on December 1, 1986. Shortly thereafter, the contract with United Engineers was signed, and a few of their employees were able to

start immediately. Consequently, Mr. Williams found that he was "less than four desks and four seats short" to accommodate the UE workers. (Tr. 671-673).

105. At that time, Mr. Williams instructed Rick Collins, Charlie Brush, and Norm Black to pick four job shoppers to release. Mr. Collins later presented Mr. Williams with a list of four names.

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Since he had no objection to those names, Mr. Williams told Mr. Collins to have Lowell Fields contact C&D about the termination of those four employees. According to Mr. Williams, his discussion with Mr. Collins was limited to whether Mssrs. Brush and Black agreed with the names on the list, which they did. (Tr. 673-674).

106. According to Mr. Williams, job shoppers were chosen to be terminated because they were employed as temporary help during peak loads and they had to be supervised by TVA managers. The United Engineer employees brought their own supervisors, and TVA hoped to keep them in place for a long time. (Tr. 676).

107. The number of employees on-site at Sequoyah continued to expand after Mr. Bohan's termination, as space became available. (Tr. 678).

108. Mr. Williams discussed Complainant's termination with him on three occasions during his last day at Sequoyah. In their first conversation, Mr. Williams told Mr. Bohan about the hiring of the UE employees. Later, he told Complainant "that from what [Mr. Williams] had been told it-he just didn't seem to be very happy at Sequoyah, you know, that he didn't seem to be happy with the job he had, and it was based primarily just on the attitude he had exhibited toward the job." (Tr. 702-704). Mr. Williams summarized their third meeting as follows:

I didn't--did not tell Mr. Bohan that I didn't like him. And, I did not tell him that I hadn't liked him from the first time I met him. I told him that based on the perception that I had formed from his not liking the general procedures and from his statements that he wanted a very prescriptive procedure that told him step by step how to do his work that he would appeared to have taken a large amount of management's attention that we didn't

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have the time to give him.

And, that had I known that he was on that list I would not have allowed him to transfer. I did tell him that I wouldn't have allowed him to transfer had I known he was coming. (Tr. 704-705)

109. Mr. Williams formed his opinion of Mr. Bohan from his contact with him over the PIR'S. (Tr. 705-706).



110. Mr. Williams testified that he did not complete the Contract Employee Release Forms on Bohan or Grierson, which indicated that conduct and inadequate performance resulted in their termination and his unwillingness to recommend them for rehire. (Tr. 707-708; CX 11 at 3 and 4).

111. On March 16, 1987, Mr. Williams met with a Department of Labor investigator. He read and signed a statement (Tr. 737), which included the following:

Rick Collins (group leader), me and the two section supervisors Norm Black and Charles Brush made the decision [to terminate Steve Bohan, David Grierson, Chuck Gowin, and R. Higgins]. Bohan was in Brushes [sic] group, so was [sic] Grierson and Gowin. Higgins was in Blacks group. We had only had a few days to see them working. They were all let go at the same time. I talked to C. Randal McIntosh and Richard Lawrence--they both said Steve had a rotten attitude toward his job--when Steve was here he was surly and made no bones about being here that he did not want to be here. . . . The section supervisors had little to judge by. I told the supervisors we had to pick four people--The decision was made primarily on the basis of 3 days working. There

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were two people David Lindsey and Jim Thomas that I did know. The rest of them I did not know. I had not made inquiries on the other three let go. I had an inkling from the discussion on the CAQ's that Bohan was looking for easy ways to get the work done rather than go out and dig. (CX 29)

112. At the hearing, Mr. Williams testified that his opinion of Mr. Bohan had absolutely no bearing on his termination, because the people who actually made the decision had no knowledge of his PIR'S. Mr. Williams explained that he said in his DOL statement that he was responsible for the decision because he was asked who "signed the dotted line that made it happen." According to Mr. Williams, Mssrs. Brush, Black, and Collins actually chose the job shoppers to be released. (Tr. 672- 676, 742).

113. Mr. Williams indicated that he had spoken with Mr. Lawrence about Complainant's attitude while they were working on the PIR'S. He did not recall when Mr. McIntosh agreed with his perception of Complainant's attitude. (Tr. 744-745).

114. Mr. Williams testified that, to the best of his recollection he did not discuss Complainant with Rick Collins until after his termination. He later testified that he did not discuss the reasons for terminating the four job shoppers with Mssrs. Brush or Collins until after their names were called in for termination. (Tr. 674-676, 737, 751-752, 767-768).

#### *F. TVA's Review of Complainant's Employee Concerns*

*Michael Alexander*



115. Mr. Alexander has been the TVA Employee Concern Program Manager for the Knoxville office since February 1986. The Employee Concern

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Program was established within the Office of Nuclear Power to enable employees to raise their concerns outside of their line management. The concerns fall in nine basic categories ranging from management and personnel issues through nuclear safety-related issues. According to Mr. Alexander, the program was created because "in the perception of the regulator and in the mind of TVA upper management, there had been a breakdown in communications between line employees and line supervision, which would allow for ready solution and resolution of those kinds of problems within the line." The program also provides for confidentiality for the employee presenting the concern, even if confidentiality is not requested. (Tr. 565-568).

116. Mr. Bohan met with Mr. Alexander in his office on June 9, 1986. He wanted to file two Employee Concerns: ECP-86-KX-066-01 and ECP-86-KX-066-02. The former concern referred to the incomplete nature of many records on RIMS; whereas, the latter objected to the lack of a standard method for correcting quality records. (Tr. 5U-569; CX 7).

117. Upon investigation, the Director of Nuclear Quality Assurance responded to ECP-86-KX- 066-02 as follows:

[a] quality notice (QN) to the Nuclear Quality Assurance Manual, Part 1, Section 2.17 has been drafted which will established consistent quality assurance (QA) requirements for all Office of Nuclear Power organizations that generate or maintain QA records. When issued, this QN will correct the problems referred to in the subject employee concern report.

That quality notice was issued on December 1, 1986. (Tr. 569-571; CX 7 at 28; RX 5).

118. Mr. Alexander determined that both concerns were substantiated. (CX 7 at 18, 24). Although Mr. Alexander was not aware that Complainant had

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previously filed PIR'S, there is no relationship between his reports and those PIR'S. Mr. Alexander explained that "[t]he PIR system is a system that was established to report on regulatory deficiencies requirements stated regulations. The findings in my report are broader than that. I did not investigate whether or not there were violations of regulations per se. Our conclusion was that the issue that had been raised by Mr. Bohan was valid in that in a professional engineering manner TVA's QA records procedures needed to be revised." (Tr. 571-574).

119. Mr. Alexander did not disclose to Mr. Bohan's supervisors that he had initiated employee concerns. He also did not discuss Mr. Bohan with his supervisors during his investigation. However, Mr. Alexander discussed the substance of Mr. Bohan's concerns, anonymously, with Jorge Ferrer, Complainant's Group Leader. He did not consider Complainant's concerns so unique to his work so as to identify him as the source of Mr. Alexander's investigation. (Tr. 574, 579, 582-583).

120. According to Mr. Alexander, one of Mr. Bohan's Employee Concerns was classified as safety related because it dealt with quality assurance records, which are inherently safety related. (Tr. 581-582).

#### *G. Other Miscellaneous Contacts with Complainant*

##### *Leona Kerley*

121. Ms. Kerley is a Contract Specialist in the Division of Nuclear Engineering for TVA. (Tr. 637).

122. Ms. Kerley has spoken to Mr. Bohan on several occasions: when he first came to work for TVA; and when he was transferred to Sequoyah. (Tr. 638).

123. In November 1986, Ms. Kerley served as a

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contract administrator, processing temporaries. She was notified of the job shoppers' transfer to Sequoyah and arranged for the necessary drug and psychological testing. During the period of delays, Mr. Bohan telephoned Ms. Kerley almost every day to determine when the transfer would take effect. According to Ms. Kerley, Complainant was often rude and abusive. Other job shoppers also called her about the move, but most of them were pretty nice about it. At the time, she did not know what was going on either, so she tried to find out who was making the decisions and that was why some of the job shoppers kept calling her. (Tr. 638, 461-646).

##### *Patsy Gail Pye*

124. Ms. Pye is employed by Consultants and Designers of Atlanta. In November 1986, she was working in the Atlanta office. (Tr. 401).

125. The first of November, Ms. Pye received a telephone call from Leona Kerley, her contact at TVA, notifying her that five of C&D employees were being transferred to Sequoyah and that C&D was to notify them of the move. Mr. Bohan was one of the employees to be transferred.

126. Ms. Pye notified Mr. Bohan of the transfer. He seemed very upset, as did the others, but they understood that this was the purpose of job shoppers, i.e., to go wherever the client needs them. According to Ms. Pye, Complainant telephoned her 2-3 times per day throughout the four-week delay of the transfer due to unavailability of space. His demeanor was often loud, rude and abrupt. Ms. Pye also indicated that Complainant was unusual because of the number of calls he was making, although other contract employees also complained to her. (Tr. 403-406).

127. Ms. Pye testified that she was aware that there might be layoffs beginning December 1, 1986, based on her communications with Rick

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Collins. (Tr. 411).

128. Most recently, Ms. Pye has been employed by C&D since August 1986. Prior to that, she was employed by C&D on two other occasions as both a contract employee and a sales recruiter. At the time of the hearing, Ms. Pye was working onsite at Sequoyah, in the D&E Drawing Unit. However, the contract between C&D and TVA was due to expire on November 5, 1987. (Tr. 412-413).

129. Ms. Pye testified that "[a]ny time you have a contract with a company you always try to maintain a good relations." (Tr. 414).

*Carroll T Watson*

130. Mr. Watson is employed in medical services at TVA. He met Mr. Bohan in November, 1986, when Complainant was sent to the medical office for a drug screening test. (Tr. 521-522).

131. According to Mr. Watson, Mr. Bohan objected to the language used in the drug screening form. They discussed the form, and Complainant signed it, under protest, after making several changes. Mr. Watson described Mr. Bohan's demeanor at that time as upset and loud. (Tr. 523-527; RX 11).

132. Mr. Bohan's drug test was negative. (Tr. 528).

#### IV. DISCUSSION

Complainant, Steven Bohan, currently resides in Richland, Washington, where he works as a Quality Assurance Electrical Engineer at a nuclear waste storage facility for Westinghouse Hanford Company. Prior to that, for almost one year, from December 1985 to December 1986, Mr. Bohan worked for TVA as an engineering associate, under a contract for augmentation employees with Consultants & Designers, Inc. Originally assigned to the Waits Bar Program in Knoxville, Complainant

later began working on the Sequoyah Nuclear Plant re-start project. He was transferred on-site on December 1, 1986, after several delays. On December 11, 1986, he received notice of termination in his paycheck envelope. (Findings 1, 3, 14, 15, 17). In this action, Complainant asserts that his dismissal was due to two Problem identification Reports that he filed with TVA while working in Knoxville, which he contends constituted protected activity under the Act. Consequently, Mr. Bohan seeks compensation under the ERA for lost wages, plus interest, from the date of termination until his re-employment on June 29, 1987, and for the difference in his wages from June 29, 1987 until the remainder of the job shoppers were let go on August 28, 1987,

Respondent denies any liability under the ERA, asserting that (1) Complainant's PIR's do not constitute protected activity under the statute; and (2) in any event, his dismissal was unrelated to those activities and was due solely to a shortage of work space and furnishings at Sequoyah.

Thus, three issues are presented for resolution:

1. Whether Complainant engaged in activity protected under the ERA;
2. If so, whether that protected activity resulted in his termination of employment; and
3. If Complainant succeeds, what damages he suffered.

A. Whether Complainant engaged in protected activity?

Complainant filed two PIR's in June and July of 1986, which were assigned the following numbers: GENEED8603 and WBNEED8654.<sup>3</sup> The former addressed a generic problem at TVA, i.e., the lack of adequate procedures to control quality-related documents, referring to the RIMS system. The latter complained that TVA did not have adequate procedures for the correction of quality documents. (Findings 5-7).

According to Jimmy Collins, who reviewed Complainant's

PIR's as lead electrical engineer of the Electrical Engineering Branch of the Division of Engineering Design for Watts Bar, "a PIR is an acronym for Problem identification Report, which is within the DNE procedure for processing potential adverse conditions to quality. PIR is usually initiated as a result of potential problem or a problem that is not deemed to be nuclear safety related." (Findings 58-60).

Although TVA's Nuclear Engineering Procedure 9.1 provided for review and action on PIR's within certain time limitations, it is uncontroverted that Mr. Bohan's PIR's were not handled in a timely fashion. However, on December 16, 1986, following a TVA management review team meeting, PIR No. WBNEEB8654 was issued. According to Jimmy Collins, the PIR was found valid because the management review team agreed (1) that there were inconsistent procedures for the correction of quality documents and (2) that there should be procedural requirements to control those corrections. Subsequently, no corrective action was taken because TVA determined that no regulation had been violated. The other PIR was also held invalid and voided. (Findings 61, 66-70).

During the same time period, Complainant filed two parallel Employee Concerns with Michael Alexander, TVA's Employee Concern Manager for the Knoxville office. According to Mr. Alexander, TVA established the Employee Concern Program to enable employees to raise their concerns, including nuclear safety-related issues, outside of their line management. Mr. Alexander found that both of Complainant's concerns were substantiated. In ECP-86-KX-066-02 Mr. Bohan objected to the lack of a standard method for correcting quality records. Mr. Alexander classified that Employee Concern as safety related, because it dealt with quality assurance records which are by definition safety related. In response to ECP-86-KX-066-02, the Director of Nuclear Quality Assurance

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issued a quality notice to the Nuclear Quality Assurance Manual, on December 1, 1986, to establish consistent quality assurance requirements for all Office of Nuclear Power organizations that generate or maintain quality records. (Findings 10, 116-120).

The threshold issue in this case is whether the PIR's raised by Complainant within the six months prior to his termination constitute protected activity under the ERA. Section 5851 (a) of the Act provides as follows:

No employer, including a Commission licensee, an applicant for a Commission license or a contractor or a subcontractor of a Commission licensee or applicant, may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)--

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or the Atomic Energy Act of 1954, as amended [42 U.S.C.A. § 2011 et seq.], or a proceeding for the administration or enforcement or any requirement imposed under this chapter or the Atomic Energy Act of 1954, as amended;

(2) testified or is about to testify in any such proceeding or;

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other

action to carry out the purposes of this chapter or the Atomic Energy Act of 1954, as amended [42 U.S.C.A. § 2011 et seq.].

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Complainant asserts that his internal complaints filed in the form of PIP'S, and the parallel EC's in June and July of 1986, constitute protected activity under the Act. He concedes that he did not contact the Nuclear Regulatory Commission until after his dismissal. Therefore, the issue at hand is specifically whether Complainant's internal complaints suffice to demonstrate protected activity under the Act.

The Second, Ninth, and Tenth Circuits have held that the ERA protects employees who file internal safety-related or quality control complaints. *See Consolidated Edison v. Donovan*, 673 F.2d 61 (2d Cir. 1982); *Mackowiak v. University Nuclear Systems, Inc.*, Case No. 82-ERA-8 (April 29, 1983), *aff'd and remanded*, 735 F.2d 1159 (9th Cir. 1984); *and Wells v. Kansas Gas and Electric Co.*, Case No. 83-ERA-12 (June 14, 1984), *aff'd sub nom Kansas Gas & Electric v. Brock*, 780 F.2d 1505 (10th Cir. 1985), *cert. denied* 106 S.Ct. 3311 (1986). In addition, the Secretary of Labor has held that the court's analysis in *Mackowiak* is the correct approach. *Willy v. The Coastal Corporation*, Case No. 85-CAA-1, Decisions of the OALJ and OAA Vol. 1, No. 3, p. 382 (June 4, 1987). *Cf. Brown & Root, Inc. v. Donovan*, 747 F.2d 1029 (5th Cir. 1984). The Secretary of Labor did not distinguish between internal complaints made by quality inspectors and those made by other employees. *Willy, supra*.

Mr. Bohan filed two PIR's concerning the correction and maintenance of quality documents. Although Respondent contends that neither PIR involved safety-related issues, that argument is undercut by the testimony of Mr. Alexander, who reviewed Complainant's parallel employee concerns. According to Mr. Alexander, ECP-86-KX-066-02, which was equivalent to PIR No. WBNEEB8654, raised a safety-related issue because it dealt with the correction of quality assurance records, which are by their nature safety related. In addition, the mere assignment of official PIR numbers to Mr.

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Bohan's complaints placed them in a tracking log, subject to audit by the NRC. (Findings 10, 116- 120).

TVA argues that those PIR's were invalid from their inception, because they did not state a violation of a regulation, and that they were ultimately invalidated as non-PIR's. Also, TVA maintains that Complainant's PIR's were "insignificant," compared to some of the really serious problems it faced during the same time frame. (Findings 64, 71, 97, 101).

The actual validity of the PIR's is not the issue. Rather, the question is whether Complainant had a "good faith, reasonable belief that working conditions are unsafe or

unhealthful. Whether the belief is reasonable depends on the knowledge available to a reasonable man in the circumstances with the employee's training and experience." *Pensyl v. Catalytic, Inc.*, Case No. 83-ERA-2, Decision and Order of the Secretary of Labor issued January 13, 1984. In Mr. Bohan's case, he had nine years of experience in the nuclear industry and was aware that using "white out" was not a generally accepted method for correcting quality documents because it erased the history of the documents, which were required to be maintained for the life of the plant by the NRC. Also, there is no evidence in this record that Mr. Bohan's complaints regarding maintenance and correction of quality documents were calculated to harass, disparage or harm Respondent.

Neither the alleged insignificance nor the outcome of Mr. Bohan's PIR'S, as argued by TVA, operates to negate the fact that he engaged in protected activity, by raising safety-related issues with his employer, which had the potential to reach the NRC. Moreover, it is notable that Complainant's parallel Employee Concerns were considered substantiated. In fact, TVA issued a quality notice in response to the EC related to correction of quality documents, which was considered safety related. (Findings 117, 118).

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B. Whether Complainant's dismissal resulted from his protected activity?

The second pivotal issue is whether Complainant was fired because of his protected activity. Respondent denies that Mr. Bohan's PIR's played any role in his subsequent dismissal. Specifically, TVA maintains that it had a legitimate business reason for terminating Complainant, i.e., a shortage of space and facilities on-site combined with his poor attitude. In addition, Respondent argues that the actual decision to discharge Mr. Bohan was made by his supervisors at Sequoyah who had no knowledge of his protected activity.

Mr. Bohan worked for TVA for almost a year. Until December 1, 1986, he worked in Knoxville: first on the Watts Bar Project; subsequently on the Sequoyah Nuclear Plant. As previously noted, he filed two PIR's and two EC's while in Knoxville.

The record relating to those PIR's reveals that the resolution of Mr. Bohan's PIR's was delayed several months for various reasons. In addition, it is also clear from the record that those PIR's were the subject of many discussions and some emphatic memoranda among TVA staff, including Bob Williams. The individuals involved, with the exception of Mr. Bohan himself, insist that their concern related solely to the untimeliness of their handling of his PIR'S. For whatever reason, it must be concluded that Complainant's PIR's caused controversy at TVA. In addition, they were followed by Employee Concerns and a letter to TVA's Inspector General. Although Mr. Alexander indicated that he discussed the parallel EC's only with Jorge Ferrer, Complainant's immediate supervisor, and maintained his confidentiality, it must be inferred by the timing involved, the subject matter of the EC's, Mr. Ferrer's familiarity with Mr. Bohan's complaints, and



the continuing controversy, that he was able to surmise that Mr. Bohan had filed the EC's. (Findings 3, 5, 10, 63, 65, 98, 102, 119). The record compels the inference that

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Employer had knowledge of both the PIR's and the related EC's.

In early November 1986, TVA notified Complainant's group of job shoppers that they would be transferred on-site to Sequoyah. That move was subsequently delayed several times due to the unavailability of facilities at Sequoyah. As a result, considerable inconvenience resulted to the job shoppers who were attempting to wind up their affairs in Knoxville and make living arrangements near the Sequoyah Nuclear Plant. It is uncontroverted that a number of the job shoppers, including Complainant, were inconvenienced and complained, sometimes vehemently, to both TVA and C&D. (Findings 14, 15, 30, 33, 47, 82, 123, 126).

On Monday, December 1, 1986, Mr. Bohan reported to Robert C. Williams at Sequoyah. Thereafter, Mr. Williams referred Complainant to Rick Collins, who assigned him to Charles Brush's group. For the first three or four days on-site, the job shoppers attended training classes. Upon completion of these classes, on December 4, 1986, Mr. Bohan began working for Mr. Brush, evaluating fuse drawings. Complainant worked on that project until he received his notice of termination on December 11, 1988. According to Rick Collins, he and his project engineers made the decision regarding which employees to dismiss on the preceding Monday (December 8, 1986). (Findings 15-17, 82).

On the day of his discharge, Mr. Bohan questioned his supervisors as to the reason for it. According to Complainant, Mr. Williams informed him, "if I had known you were being transferred down here, you know I wouldn't have let you be transferred down here because I didn't like you from the first time I confronted you in Knoxville." Mr. Williams denied stating that he did not like Mr. Bohan. Mr. Collins attributed Complainant's dismissal to a projected shortage of space, due to the arrival of the UE employees. According to Mr. Bohan, Mr. Brush indicated that he did not know

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much about what had happened because he too had only been at Sequoyah for a couple of weeks. Mr. Brush testified at the hearing that he did not recall talking with Complainant after his dismissal. (Findings 17-19, 76, 108). Complainant urges that the explanation for his discharge offered by Rick Collins was merely a pretext to disguise that he was terminated because of his PIR'S, as evidenced by Mr. Williams' attitude toward him, arising from their previous contact over the PIR'S.



In response, TVA maintains that Mssrs. Brush, Black, and R. Collins made the actual decision as to which job shoppers to terminate and that they had no knowledge of Complainant's PIR'S. Therefore, Respondent argues, it cannot be concluded that TVA fired Complainant because of those PIR's. TVA also contends that, although Mr. Williams knew about the PIR'S, he merely accepted the list of employees chosen by Rick Collins and his principal engineers. Finally, TVA insists that it had a legitimate business reason for discharging Complainant, as well as three other job shoppers: a shortage of space and facilities due to the imminent arrival of contract employees from United Engineering combined with those particular job shoppers' shortcomings.

Based on the parties' arguments, Mr. Bohan's situation appears to involve a "dual motive discharge," where the employer alleges a legitimate reason for dismissal, while the former employee asserts that it was due, at least in part, to his protected activity. *See e.g., Wright Line, a Division of Wright Line, Inc.*, 1980 CCH NLRB #17,356 (1980), *affirmed sub nom. NLRB v. Wright Line*, 662 F.2d 889 (1st Cir. 1981), *cert. den.* 455 U.S. 989 (1982); and *Consolidated Edison Co. of New York, Inc. v. Donovan*, 673 F.2d 61 (2d Cir. 1982).

The Secretary of Labor has adopted the two-part test for "dual motive" discharges announced by the U.S. Supreme Court in *Mt. Healthy City School District v. Doyle*, 429 U.S. 274, 97 S.Ct.

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568, 50 L.Ed. 2d 471 (1977). Under the *Mt. Healthy* test, "once the plaintiff has shown that the protected activity 'played a role' in the employer's decision, the burden shifts to the employer to persuade the court that it would have discharged the plaintiff even if the protected activity had not occurred." *Mackowiak v. University Nuclear Systems, Inc.*, 735 F.2d 1159, 1163-1164 (9th Cir. 1984).

Initially, Complainant must establish a prima facie case of discrimination under the Act. The parties stipulated that they are subject to the ERA and that Complainant was discharged on December 11, 1986. (Stip. 1, 2). In addition, he has demonstrated that he engaged in protected activity. The record also reveals that his supervisors at TVA's Knoxville office had knowledge of his protected activity, as did Bob Williams, who later authorized his dismissal. (.Findings 5, 60, 96, 105, 111, 119).

The record clearly demonstrates that, despite the delay in processing the PIR'S, or perhaps because of it, several TVA supervisor paid a great deal of attention to Complainant's PIR'S. One of those supervisors was R. C. (Bob) Williams, who, by virtue of his position, reviewed all the PIR's related to electrical engineering. In fact, Mr. Williams met with Complainant for 1-1 1/2 hours to discuss those PIR'S, at which time he advised him that they were not valid. However, Complainant's PIR's remained an issue until December 1986, after he had been transferred to Sequoyah. in a memo dated September 17, 1986, Mr. Williams reiterated his opinion as to the invalidity of the PIR'S,

but expressed his concern as to TVA's failure to resolve them in a timely fashion, recommending that a management review team be convened to handle them. Mr. Williams also wrote, "I don't think there is any way we will get out of an employee concern. We have given Bohan basis is our lack of timeliness and our non responses to his memos. [sic] This hasn't been handled well--from that

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perspective." (Findings 60, 63-68, 96-98; CX 6 at 12-27). Based on Mr. Williams' memos, it is clear that he was very familiar with Mr. Bohan and his PIR'S.

On October 15, 1986, Mr. Williams transferred on-site to Sequoyah, where he immediately requested additional manpower. In response to that request, Complainant, along with several other job shoppers from Knoxville, reported to Mr. Williams for assignment on December 1, 1988. At that time, Mr. Williams referred him to one of his group leaders, Rick Collins, who assigned him to Charlie Brush. (Findings 15, 99, 103).

Although Mr. Williams testified at the hearing that he did not make the decision to discharge Complainant, his earlier statement to a Department of Labor investigator<sup>4</sup> indicated that he, as well as Rick Collins, Norm Black, and Charles Brush made the decision to terminate Mr. Bohan and the others. (Finding 111; CX 29).

Mr. Williams' statements to the DOL included the following:

*Rick Collins (group leader), me and the two section supervisors Norm Black and Charles Brush made the decision [to terminate Steve Bohan, David Grierson, Chuck Gowan, and R. Higgins]. Bohan was in Brushes [sic] group, so was [sic] Grierson and Gowin. Higgins was . in Blacks group. We had only had a few days to see them working. They were all let go at the same time. I talked to C. Randal Macintosh and Richard Lawrence--they both said 5,ave had a rotten attitude toward his job--when Steve was here he was surly and made no bones about being here that he did not want to be here. . . . The section supervisors had little to judge by. I*

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*told the supervisors we had to pick four people-The decision was made primarily on the basis of 3 days working. There were two people David Lindsey and J/M Thomas that I did know The rest of them I did not know. I had not made inquiries on the other three let go. I had an inkling from the discussion on the CAQ's that Bohan was looking for easy ways to get the work done rather than go out and dig. (CX 29). (Emphasis Added)*

In addition, from Mr. Williams' DOL statement, it must be concluded that he had made inquiries about Mr. Bohan prior to his termination, although he testified at the hearing that he had not. (Findings 111, 114). Thus, Mr. Williams' statement to the Department of

Labor, which was given only about four months after Complainant's termination juxtaposed against his hearing testimony, compels the finding that he played an active role in the decisionmaking. It undercuts his denial of any involvement in Complainant's termination.

Although Mr. Williams' DOL statement seemingly indicates that he did not know Steven Bohan at the time of dismissal, that conclusion seems scarcely credible in light of their 1 1/2 hour "professional discussion" of the PIR's and the prolonged battle fought over those same PIR'S. (Finding ill; CX 29). In addition, Mr. Bohan testified that he reported to Mr. Williams upon his arrival at the Sequoyah Nuclear Plant. When asked directly at the hearing whether he had held the PIR's against Complainant, Mr. Williams responded evasively:

It wasn't uncommon at all from the position I held I reviewed probably 700, 750 a year which is about 2 or--for every person in the electrical discipline. You know it wasn't uncommon at all for a person to initiate them and it wasn't uncommon at all for them to be sent back for either

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more specific writing or more details of what the problem entailed.  
From a management perspective we probably sent back I guess 80 percent of the ones that we saw. (Finding 11 00)

Mr. Williams also conceded that he told Mr. Bohan on the day of his dismissal that, had he known he was on the transfer list, he would not have allowed him to transfer to Sequoyah, based on his perception of him needing very prescriptive procedures. Mr. Williams arrived at that opinion after his contact with Complainant over the PIR'S. (Findings 108-109). Thus, it is clear that Mr. Williams harbored animosity toward Mr. Bohan as a result of his protected activity.

Rick Collins was also involved in Complainant's dismissal. At the hearing, both Rick Collins and Bob Williams testified that they did not discuss Mr. Bohan prior to his dismissal. (Findings 82-84, 94, 114). However, Mr. Collins submitted the following statement to a Department of Labor investigator on March 17, 1987:

Steve Bohan-he was unhappy about being at Sequoyah. The others seemed to accept what they had to do to stay on the job-Brush was his section supervisor-He thought Bohan did not have a good attitude about being here. He had been in Knoxville about a year--He was talking a about moving and getting a car to Texas. *Williams my supervisor indicated he had met Bohan before and he did not have a high regard for him--Williams indicated that part of the way he felt about Bohan was because of the way Bohan had reacted to not getting an SCR or PIR accepted. That Bohan had thought it was a problem and it was not. . . . Williams was aware of the problem we had had here with Grierson and supported the decision on him. He had no comment on Gowin and Higgins.* (Findings 93; CX 25) (*Emphasis Added*)

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From this statement, which was reviewed and signed by Mr. Collins, it is evident that he and Mr. Williams discussed Complainant at some point. The statement does not make clear when that discussion took place, but within the context of Mr. Collins' further remarks regarding Mr. Williams, it appears that it was part of the decisionmaking process. Thus, Mr. Collins' testimony at hearing that he was not aware of his supervisor's animus toward Complainant is not persuasive. Mr. Collins' attempt to insulate Mr. Williams from the decision to terminate Complainant is simply not credible in light of his previous, more contemporaneous statement to the DOL investigation.

Finally, according to Rick Collins, Charles Brush initially proposed to terminate Complainant based on his perception of his attitude. Mr. Brush also testified that he made the initial decision to dismiss Mr. Bohan, without any knowledge of his PIR's. According to Complainant, in his meeting with Mr. Brush on his last day, his immediate supervisor indicated that he did not know much about what had happened because he, too, had only been at Sequoyah for a couple of weeks and did not know anybody. In Mr. Brush's earlier deposition an inconsistency arose in his testimony regarding his basis for naming Complainant for dismissal.<sup>5</sup> In light of that and other inconsistencies in the testimony of Complainant's supervisors regarding the reasons for his termination and their related discussions, Mr. Bohan's testimony on this point is more convincing. (Findings 19, 75-76, 82).

The record also reveals that the decision to terminate Complainant took place within a week of his reporting to Mr. Williams in Sequoyah and less than six months after his initiation of the first PIR in question. In fact, Complainant had actually worked in Sequoyah for perhaps two days before

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the list was drawn of the employees to be fired. Therefore, his supervisors had very little opportunity to observe his demeanor or his work. (Findings 77, 85). In addition, although the testimony of Complainant's co-workers regarding his on-the-job attitude is not conclusive, it does tend to undercut his supervisors' remarks on that point, especially in light of the other inconsistencies regarding the basis for his termination and the role played by each in his termination. (Findings 28-29, 32, 41, 46).

Based on the sequence of events, Mr. Williams' previous dealings with Complainant, his conceded poor opinion of him related to his protected activity, his role in the termination, and the inconsistencies in the testimony of the TVA supervisors, Mr. Bohan has established a *prima facie* case of discrimination.

The burden now shifts to Respondent to demonstrate that it would have discharged Complainant, even absent the protected activity. *Mackowiak* at 1164, citing *Mt. Healthy*,

*supra*. However, "the employer also bears the risk that 'the influence of legal and illegal motives cannot be separated. . .'" *Id.*, quoting, *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 103 S.Ct. 2469, 2475, 76 L.Ed. 2d 667 (1983).

Respondent argues that Mr. Bohan's termination resulted solely from a projected shortage of space and facilities in the Sequoyah offices. The question still is whether Complainant would have been discharged *but for* his protected activity.

Mr. Williams has conceded that, based on his perception of Complainant drawn from their contact over the PIR'S, he would not have wanted Mr. Bohan to work for him. (Finding 108). Although, Mr. Williams insists that he played only a passive role in the termination, the evidence of record does not support that conclusion. Rather, it appears that, although Mr. Williams has since tried

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to distance himself from the decision, Rick Collins was aware of his supervisor's opinion of Mr. Bohan and it is uncontroverted that Mr. Collins played a principal role in the decision to dismiss Complainant. According to Mr. Bohan, Mr. Williams told him on the day of his discharge, "if I had known you were being transferred down here, you know, I wouldn't have let you be transferred down here because I didn't like you from the first time I confronted you in Knoxville." (Finding 17). Mr. Bohan's version of that exchange is credible in light of Mr. Williams' demonstrated animus toward him because of his protected activity. As a result, it is unlikely that Mr. Williams was essentially uninvolved in terminating Complainant, as he and Mr. Collins testified.

Complainant's supervisors at Sequoyah conceded that they had had no opportunity to observe or evaluate his work product. (Findings 77, 85). Therefore, the decision to fire him was not and could not have been based upon performance. Mssrs. Collins and Brush's testimony regarding Complainant's personality seems inextricably bound with Mr. Williams' opinion of him related to the PIR's and is, moreover, riddled with inconsistencies regarding the basis for his termination and their respective roles in it. Mr. Williams admitted that he formed his opinion of Complainant based on their "professional discussion" of the proposed PIR'S. As previously noted, the employer bears the burden of separating legitimate and illegitimate reasons for dismissal. In this case, considering Mr. Williams' authority at the time of dismissal and his professed animosity toward Complainant, it would be impossible to distinguish his motives. Even conceding that TVA suffered a shortage of four spaces within a week of Complainant's transfer<sup>6</sup>, "it is not clear that he and not someone else would have been dismissed absent his previous protected activity. Accordingly, Respondent has failed to meet its burden under the *Mt. Healthy* test for "dual motive" discharges. Complainant has

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demonstrated that he is entitled to the appropriate relief for unlawful discharge under the Energy Reorganization Act. Consequently, the remedy owed Complainant must be determined.

C. What damages are owed?

The record demonstrates that Complainant was out of work from December 12, 1986 through June 28, 1987. (Findings 1, 17). Since June 29, 1987, he has worked for Westinghouse Hanford Company as a Quality Assurance Electrical Engineer, earning \$36,000.00 per year. (Finding 1). At TVA, Mr. Bohan earned \$23.00 per hour and \$34.00 per overtime hour. (CX 21). According to various TVA employees, as a general rule, Complainant's fellow job shoppers worked 60 hours per week after he left, until August 28, 1987. Those contract employees assigned to the impassity problem worked longer hours; however, prior to his discharge, Complainant was assigned to find and evaluate fuse drawings. (Findings 16, 39, 48, 91). Therefore, it is appropriate to conclude that he would have worked a 60-hour week during that period, resulting in lost wages amounting to \$45,257.14, from December 12, 1986 through June 28, 1987.<sup>7</sup>

In addition, Complainant's position with Westinghouse Hanford pays less than his job at TVA. Consequently, he suffered an additional loss of wages from June 29, 1987 until August 28, 1987, when the remaining job shoppers from his group were terminated. At Westinghouse Hanford, Complainant earns \$36,000.00 per year with no paid overtime, resulting in a weekly salary of \$692.30. Thus, from June 29, 1987 until August 28, 1987, Mr. Bohan lost wages in the amount of \$907.70 per week. In total, Complainant has lost \$53,037.43 due to his unlawful termination by TVA.

*RECOMMENDED ORDER*

IT IS HEREBY RECOMMENDED that the Secretary of Labor ORDER Respondent, Tennessee Valley Authority, to

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1. compensate Complainant, Steven L. Bohan, for lost wages in the amount of \$53,037.43, which he would have received absent the unlawful discharge action of December 11, 1986;
2. pay interest on the amount of wages and compensation provided in item 1 above at the rate prescribed by 28 U.S.C. § 1961;
3. expunge from its records all memoranda or other reference to Complainant's discharge, attributing it to conduct and inadequate performance, and its refusal to rehire him after December 11, 1986;

4. post on the bulletin boards of its Sequoyah Nuclear Plant and Knoxville Offices a copy of this Order for a period of thirty days; and

5. pay Complainant's counsel, Donald K. Vowell, reasonable attorney's fees and expenses, such as may be later approved and allowed.

THEODOR P. VON BRAND  
Administrative Law Judge

**[ENDNOTES]**

<sup>1</sup> The following citations to the record are used herein:

CX-Complainant's Exhibit  
RX-Respondent's Exhibit  
ALJX-Administrative Law Judge's Exhibit  
Tr.-Transcript of the Hearing

Findings refer to the numbered findings in this decision.

<sup>2</sup> Since R. C. (Bob) Williams was involved both in the review of Complainant's PIR's and in his ultimate dismissal, his testimony will be summarized in the next section.

<sup>3</sup> Under the procedures established for PIR'S, each PIR receives a unique number which is associated with the document until it is closed out. Those numbers are placed in a tracking log, which is monitored by the engineering assurance organization to ensure that every PIR is handled. The log is also subject to audit by the Nuclear Regulatory Commission. (Findings 61-62).

<sup>4</sup> The DOL statements of Bob Williams and Rick Collins were accepted solely for the purpose of evaluating their credibility regarding the discrimination issue. Since the DOL statements were given only three months after Complainant's termination, they are more contemporaneous to the events in question and, therefore, more persuasive than the witnesses' subsequent testimony at hearing. Based on the inconsistencies between their testimony and their DOL statements with respect to critical questions, Mr. Williams and Mr. Collins' credibility has been impeached and Mr. Bohan's account of the sequence of events and its basis is accepted.

<sup>5</sup> During his deposition, Mr. Brush had recalled one incident where he felt Complainant had unnecessarily raised a problem with him in a forceful manner. Originally, Mr. Brush testified that that incident had no bearing on his decision to place Mr. Born on the list of job shoppers to be let go. Subsequently, after a recess and conference with Respondent's counsel, Mr. Brush indicated that that incident had influenced his decision. Mr. Brush's explanation of that inconsistency at hearing was not persuasive, and his testimony regarding the basis for Complainant's dismissal is not credible.



<sup>6</sup> Complainant alleged that accountability rosters were available for the time frame involved to demonstrate the number of individuals on-site at the time of his dismissal and thereafter. Respondent indicated that it was unable to provide those rosters because supervisors are not required to keep them over any period of time. It is not clear from the testimony whether such rosters continued to exist at the time of hearing: however, in light of the conclusion that Respondent's legal and illegal motives are inseparable in this case, it is unnecessary to probe further the question surrounding the accountability rosters and the actual number of employees at Sequoyah following Complainant's dismissal. (Tr. 249-250, 277, 279, 754-756).

<sup>7</sup>

28 2/7 weeks, 60 hours per week

40 hours per week at \$23.00 per hour=..... \$920.00 per week.

20 hours per week at \$34.00 per hour=.....\$680.00 per week.

,600.00 per week

x 28 2/7 weeks

\$45,257.14